



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70829; File No. SR-NASDAQ-2013-122)

November 7, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change to List and Trade Shares of the First Trust High Income Fund of First Trust Exchange-Traded Fund VI

I. Introduction

On September 12, 2013, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the First Trust High Income ETF (“Fund”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on September 26, 2013.³ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund VI (“Trust”). The Trust is registered with the Commission as an investment company.⁴ The Fund is a series of the Trust.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70460 (Sept. 20, 2013), 78 FR 59402 (Sept. 26, 2013) (“Notice”).

⁴ The Trust has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission. See Post-Effective Amendment No. 3 to Registration Statement on Form N-1A for the Trust, dated Jan. 16, 2013 (File Nos. 333-182308 and 811-22717).

First Trust Advisors L.P. will be the investment adviser (“Adviser”) to the Fund. First Trust Portfolios L.P. (“Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. Brown Brothers Harriman & Co. will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

The Exchange represents that the Adviser is not a broker-dealer, but is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.⁵ The Exchange represents that the Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.⁶ The Exchange represents that for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.⁷

Principal Investments

The Fund’s primary investment objective is to provide current income and its secondary investment objective is to provide capital appreciation. The Fund will pursue its objectives by investing in large-cap U.S. exchange-traded equity securities and by utilizing an options strategy

In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release No. 28468 (Oct. 27, 2008) (File No. 812-13477).

⁵ See Notice supra note 3, 78 FR at 59403. The Exchange states that in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. See id.

⁶ See id. at 59407.

⁷ See 17 CFR 240.10A-3. See also Notice, supra note 3, 78 FR at 59407.

consisting of writing (selling) U.S. exchange-traded covered call options on the Standard & Poor's 500 Index ("Index").

In pursuing its investment objectives, under normal market conditions,⁸ the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also employ an options strategy in which it will write U.S. exchange-traded covered call options on the Index in order to seek additional cash flow in the form of premiums on the options that may be distributed to shareholders on a monthly basis. The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

The equity securities in which the Fund will invest and the options that the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or are parties to a comprehensive surveillance sharing agreement with the Exchange.⁹

The equity securities held by the Fund will be selected using a mathematical optimization process which attempts to tilt the Fund's common stock portfolio toward higher dividend paying stocks. The equity securities held by the Fund may include non-U.S. securities that are listed on a U.S. securities exchange in the form of American Depositary Receipts ("ADRs") and Global

⁸ The term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

⁹ A list of ISG members is available at www.isgportal.org.

Depository Receipts (“GDRs,” and together with ADRs, “Depository Receipts”). The equity securities will be periodically rebalanced.

The options portion of the portfolio will generally consist of U.S. exchange-traded covered calls or covered call spreads on the Index written by the Fund. The call options written by the Fund will typically be a ladder portfolio of one week, one month, two months, and three months, and will typically be written at-the-money to slightly out-of-the-money. A call option will give the holder the right to buy the Index at a predetermined strike price from the Fund. The notional value of calls written (including calls and call spreads written on the Index and/or other indexes as described in Other Investments below) will generally be between 25% and 75% of the overall Fund.

Other Investments

In addition to the options strategy described in Principal Investments above, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts.¹⁰ The Fund may utilize such derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, or to preserve capital. In attempting to enhance returns and/or hedge risks, the Fund may buy and/or write U.S. exchange-traded options on single stocks included in the portfolio, on the Index, and/or on other

¹⁰ To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund's net assets invested in such holdings will vary and will depend on several factors, including market conditions.

For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch"), and having a maturity of one year or less. Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to

finance commercial transactions; (4) repurchase agreements,¹¹ which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes. The Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's, or F2 or higher by Fitch.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

¹¹ The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share ("NAV"), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.¹²

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹³ and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

¹² See Notice and Registration Statement, supra notes 3 and 4, respectively.

¹³ 15 U.S.C. 78f.

¹⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁶ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.¹⁷ In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)) will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)), will be available on the NASDAQ OMX Information LLC proprietary index data service,¹⁸ and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session.¹⁹ On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, which will form the basis for the Fund's calculation of NAV at the end of the business day.²⁰ The NAV of the Fund will be determined once each business day, normally as of the

¹⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁷ See Notice, supra note 3, 78 FR at 59407.

¹⁸ According to the Exchange, the NASDAQ OMX Global Index Data Service is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for exchange-traded funds. See id. at 59406.

¹⁹ See id.

²⁰ On a daily basis, the Disclosed Portfolio will include for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held by the Fund, and percentage weighting

close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time).²¹

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.²²

Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.²³ Intra-day, executable price quotations for the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable.²⁴ Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.²⁵ The Distributor's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.²⁶

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio

of the security and financial instrument in the Fund. The website information will be publicly available at no charge. See id.

²¹ See id. at 59404.

²² See id. at 50407.

²³ See id.

²⁴ See id. at 59408.

²⁵ See id.

²⁶ See id.

will be made available to all market participants at the same time.²⁷ In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for one Creation Unit of the Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via the National Securities Clearing Corporation.²⁸ Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted.²⁹ The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.³⁰ Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.³¹ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.³² The Exchange also states that the Adviser is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer

²⁷ See id.

²⁸ See id. at 59406-7.

²⁹ See id. at 59407.

³⁰ See id. See also 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. See Notice, supra note 3, 78 FR at 59407.

³¹ See Nasdaq Rule 5735(d)(2)(B)(ii).

³² See Notice, supra note 3, 78 FR at 59407.

affiliate regarding access to information concerning the composition of or changes to the portfolio.³³ The Exchange states that the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options that the Fund will buy and write, with other markets and other entities that are members of the ISG, and that FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities.³⁴ In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁵

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of

³³ See supra note 5 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

³⁴ See Notice, supra note 3, 78 FR at 59407.

³⁵ See id.

equity securities.³⁶ In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an

³⁶ See id.

updated Intraday Indicative Value will not be calculated or publicly disseminated;

(e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.³⁷
- (6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.
- (7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.
- (8) The equity securities in which the Fund will invest and the options that the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.
- (9) Under normal market conditions, the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also utilize an options strategy

³⁷ 17 CFR 240.10A-3.

in which it will write U.S. exchange-traded covered call options on the Index.

The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

- (10) In addition to the options strategy that is part of the Fund's principal investment strategy, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts. To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.
- (11) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³⁸ and the rules and regulations thereunder applicable to a national securities exchange.

³⁸ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁹ that the proposed rule change (SR-NASDAQ-2013-122) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Kevin M. O'Neill
Deputy Secretary

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³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).